

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILL DIVISION

1:21cv \_\_\_\_\_

DONNA GARRETT

Plaintiff,

vs.

DR. DON TOMAS in his personal and  
official capacity as President of  
SOUTHWESTERN COMMUNITY  
COLLEGE; DR. THOM BROOKS, in his  
personal capacity and official capacity as  
Executive Vice President of Instruction and  
Student Services of SOUTHWESTERN  
COMMUNITY COLLEGE; DR. MITCH  
FISCHER in his personal capacity and  
official capacity as Dean of Health Science  
OF SOUTHWESTERN COMMUNITY  
COLLEGE; WENDY BUCHANAN, in her  
personal capacity and official capacity as  
Director of the Nursing Program of  
SOUTHWESTERN COMMUNITY  
COLLEGE; and the TRUSTEES OF  
SOUTHWESTERN COMMUNITY  
COLLEGE,

Defendants.

**NOTICE OF REMOVAL**

NOW COME Defendants, by and through the undersigned counsel, without waiving any  
12(b) defenses under the Federal Rules of Civil Procedure, and respectfully give timely Notice of  
Removal to this Court. Defendants show unto the Court:

1. On March 1, 2021, plaintiff filed a lawsuit by way of a Complaint against defendants in  
the General Court of Justice, Superior Court Division, Haywood County, North Carolina  
21 CvS 179. A copy of the Summons and Complaint Served upon defendants are

attached as Exhibits A and B respectively. Service on the defendants was accomplished on the following dates:

- a. Dr. Don Thomas was served on March 22, 2021.
  - b. Dr. Thom Brooks was served on March 22, 2021.
  - c. Dr. Mitch Fischer was served on March 22, 2021.
  - d. Wendy Buchanan was served on March 22, 2021.
  - e. The Trustees of Southwester Community College were served by agent on March 22, 2021.
2. This Notice of Removal is being filed within thirty (30) days after initial notice or receipt of any Defendant of the initial pleadings setting forth the claim for relief upon which the Plaintiff's action is based, and is timely filed under 28 U.S.C. § 1446(b).
3. None of the Defendants' time to answer or otherwise move with respect to the Complaint has expired.
4. Southwestern Community College is a community college organized and existing pursuant to N.C. Gen. Stat. § 115D-1 *et seq.*, with its principal place of business in Jackson County, North Carolina.
5. Upon information and belief the plaintiff is a citizen and resident of Haywood County, North Carolina.
6. The individual defendants are citizens and residents of the following counties:
  - a. Dr. Don Thomas Jackson County, North Carolina.
  - b. Dr. Thom Brooks Swain County, North Carolina.
  - c. Dr. Mitch Fischer Haywood County, North Carolina.
  - d. Wendy Buchanan Jackson County, North Carolina.

7. All defendants consent to the removal.
8. This action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331, which rests the United States District Courts with jurisdiction “of all civil actions arising under the Constitution, laws or treaties of the United States: and is one which may be removed to this Court by and pursuant to the provisions of 28 U.S.C. § 1441(c) because it raises a federal question.
9. Paragraph 2 of the Complaint specifically alleges that the action is being brought under 42 U.S.C. § 1983. Further paragraph 31 alleges plaintiff’s substantive due process rights under the United States Constitution were violated. Paragraph 33 alleges plaintiff rights under the Equal Protection Clause of the United States Constitution have been violated.
10. Plaintiff also alleges her rights were violated under the North Carolina Constitution.

WHEREFORE, Defendants respectfully request that this action be removed from the General Court of Justice, Superior Court Division, Haywood County, North Carolina, to this Honorable Court.

This the 21<sup>st</sup> day of April 21021.

Pope, Aylward, Sweeney & Stephenson, LLP

/s/ Andrew J. Santaniello

Andrew J. Santaniello

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Attorney for Defendants

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Removal was served upon the following parties on the 21<sup>st</sup> day of April 2021, via:

	United States Postal Service
	Facsimile
x	Electronic Mail
	Via Hand Delivery

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